



November 8, 2010

Water Docket - Environmental Protection Agency
Mail Code: 2822T
1200 Pennsylvania Avenue, NW
Washington, DC 204060

Submitted via USPS Mail and www.regulations.gov

RE: TMDL for the Chesapeake Bay Watershed, (Docket ID No. EPA-R03-OW-2010-0736)

To whom it may concern:

NAIOP Northern Virginia is a regional association which represents the commercial development industry. Our members include the majority of the commercial property ownership in Northern Virginia as well as those who undertake development projects in Northern Virginia. Our members build the buildings that contain the workers who drive the economy of Northern Virginia and the Commonwealth.

NAIOP appreciates the opportunity to comment on behalf of the development and ownership community with respect to the proposed Environmental Protection Agency's Total Maximum Daily Load (TMDL) for the Chesapeake Bay watershed.

We strongly believe that the EPA should delay adoption of the TMDL and backstops for at least one year, extending the deadline until no sooner than December 31, 2011 for the following reasons:

- **Unreasonable timeline and rushed process do not make good policy.**
The EPA is proposing major policy and regulations that impact a substantial swath of the mid Atlantic states. Decisions of this magnitude must be done properly. The process that EPA has used for the TMDL has simply been too rushed for something of this importance and enormity. From the beginning, unreasonable deadlines were set and inadequate opportunity was provided for public comment from property owners, industry and government. If approved, the implementation schedule for the changes proposed by EPA does not establish a reasonable adoption process. And, most importantly, the EPA has mandated a federal program which will result in billions of dollars in costs being imposed upon Virginia residents, businesses and local and state governments. Adding insult to injury, the EPA is expecting the citizens of the

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Commonwealth of Virginia to bear the burden of the costs of the outcome of a lawsuit that was brought against the EPA.

- **Data is flawed.**

The EPA has agreed that the model used to establish the TMDL has significant flaws and it is astonishing that the proposal continues to move forward. The data is flawed as follows:

- data used for existing impervious surfaces is overstated by a 2.5 magnitude;
- the model inadequately counts reductions currently being realized from common pollution reduction practices in Virginia; and,
- the model incorrectly accounts for pollutants from different land uses.

It is arbitrary and most likely illegal for the EPA to establish a TMDL for the Chesapeake Bay using incorrect and error prone data. The model must be fixed such that policy can be adopted that is based on solid technical data. This is bad policy making.

- **Cost-effectiveness.**

Proposing a policy that governs 64,000 square miles of land in six states and the District of Columbia without taking into consideration the costs to society is unconscionable. The cost effectiveness of the proposed solutions needs to be considered and incorporated into the TMDL. This policy has the potential for closing down business and industry resulting in substantial job losses. And, while the EPA may not be required by law to understand the financial implications of these proposed regulations, it is foolish not to take it into consideration and understand the economic impact of the proposed policy on the future of this region.

- **Virginia lacks legal authority.**

The proposed TMDL includes components which address existing development and efforts that can be undertaken to mitigate their impact on the Bay. In Virginia, there simply is no legal authority to address some of the urban/suburban retrofits proposed in the EPA draft TMDL. Some of the backstops that would be imposed on existing properties, including state and local highways simply cannot be implemented – such as removing existing parking lots, installing stormwater controls on existing sites or requiring that rain gardens be added retroactively. Virginia has no authority to require existing property owners to make these changes and to suffer the expenses for doing so.

In addition, such controls are more expensive and are also less successful in pollutant reductions per dollar spent. Wastewater treatment plant upgrades (which developers and citizens pay for through service charges) or many agricultural best management practices contained in the Virginia draft WIP are much more effective expenditures of scarce resources. Some of the proposals in the Virginia WIP are based on what is allowable under state law. This would include the proposed Agricultural BMPs which could be funded through a nutrient trading fund which accepts payments from urban/suburban land disturbing projects.

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We hope that the EPA you will consider these issues. There is no doubt that we all benefit from a cleaner Chesapeake Bay, but this is a complicated process which, if not well thought out, will create a long term negative economic impact on the citizens of the Chesapeake Bay states.

Sincerely,

A handwritten signature in black ink that reads "Martha Marks". The signature is written in a cursive, flowing style.

Martha D. Marks

President